REMARKS/ARGUMENTS

Claims 1-17 were previously pending in the application. Claims 8 and 13 are amended herein. Assuming entry of this amendment, claims 1-17 are currently pending in the application. The Applicant hereby requests further examination and reconsideration of the application in view of the foregoing amendments and these remarks.

In the event that the Examiner believes that this amendment does not place the application in condition for allowance, the Applicant requests a telephonic interview between the Examiner and the Applicant's attorney Ian M. Hughes to discuss this amendment. The Applicant requests that the Examiner call Mr. Hughes (610-933-8809) to arrange a convenient time for such an interview.

Claim Rejections:

In paragraphs 5 and 6, the Examiner rejected claims 8-10, and 13-15 under 35 U.S.C. 103(a) as being anticipated by Rosener et al. (U.S. Pub. No. 2002/0028655, hereinafter "Rosener") in view of Souissi (U.S. Patent No. 6,920,171, hereinafter "Souissi"). Applicant's invention as claimed must be present in the allegedly anticipating reference. Applicant's amended claim 1 recites:

> "**registering a wireless phone of said plurality of wireless phones, the registered wireless phone corresponding to an operator of said vehicle**; receiving a request for access to a wireless hands-free gateway from one of said plurality of wireless phones; and providing, by said wireless hands-free gateway, hands-free functionality to said one of said plurality of wireless phones **with a priority based on whether said one of said plurality of wireless phones is the registered wireless phone during operation of said vehicle** [emphasis added]."

As recited in amended claim 8, a wireless phone is registered to an operator of the vehicle, and access to hands-free functionality is prioritized based on whether the operator's wireless phone is registered during operation of the vehicle. Similar features are recited in amended claim 13. Support for these features can be found throughout Applicant's specification and, in particular, at page 7, line 8, through page 8, line 30, and page 11, line 11, through page 12, line 28.

Rosener describes a repeater system for wireless communications applications, and, by example, indicates that such repeater system might establish a piconet network in a vehicle and might be employed by an owner and passengers of a vehicle (see, e.g., Rosener, page 3, [0039]). Rosener, while speaking about the owner of the vehicle, describes only that the owner uses his phone and enables communication by a passenger's phone, and even states that the repeater handles both calls simultaneously. Rosener simply does not describe or suggest actually registering a wireless phone so that it is identified with an owner operating the vehicle, and so prioritizing the operator's access to the hands-free functionality during operation of the vehicle. Rosener does not identify or discuss the problem that a person in the act of operating a car should

have prioritized access to the hands-free functionality for safety reasons, as discussed in Applicant's specification. Thus, Rosener does not describe or suggest that one or more wireless phones are registered to operators of the vehicle, and *access* to hands-free functionality *is prioritized* based on whether *the operator's wireless phone* is registered *when the vehicle is operated*, as recited in Applicant's claim 8.

Souissi describes a frequency-hopped spread spectrum packet switching network that has multiple devices operating in two or more networks where collision between slot transmissions can occur. Souissi suggests use of a priority scheme to identify higher and lower priority device traffic, with lower priority devices limiting transmissions and higher priority devices gaining access to enhanced transmission resources (Souissi, Abstract). At page 4 of the Office Action, the Examiner cites Souissi at col. 7, lines 27-32 and col. 19, lines 35-40, for teaching "providing hands-free functionality with a priority based on whether said one of said plurality of wireless phones is the registered wireless phone." The Examiner avoids the remainder of Applicant's claim 8 feature, namely, where **the registered wireless phone corresponds to an operator of said vehicle**. Applicant's amendment to the claim distinctly point to the access being provided to the registered phone of the operator of the vehicle during operation of the vehicle. Applicant respectfully disagrees that Souissi teaches these features absent from the Rosener reference. Specifically Souissi does not teach or suggest "**registering a wireless phone of said plurality of wireless phones, the registered wireless phone corresponding to an operator of said vehicle**; . . . and providing, by said wireless hands-free gateway, hands-free functionality to said one of said plurality of wireless phones **with a priority based on whether said one of said plurality of wireless phones is the registered wireless phone during operation of said vehicle**" as recited in Applicant's claim 8.

Souissi, at col. 7, lines 27-32, simply states that "the controller assigns priorities to devices" or, alternatively, "a protocol observed by the devices can determine priorities." However, the Souissi reference goes on to state that "priorities can be determined, for example, as a function of message latency, previous unsuccessful attempts to transmit, type of device or the like." Clearly, Souissi is concerned with priority as a function of transmission characteristics of the channel for the device and not about the characteristics of the user of the device, namely, that the user is the one operating the vehicle. Souissi's controller looks at the device's access and collisions on the channel, and **not to *the user*** of the device or the user's activities for teaching "priorities" of devices. Souissi does not describe or suggest that one or more wireless phones are registered to operators of the vehicle, and access to hands-free functionality is prioritized based on whether the operator's wireless phone is registered, as recited in Applicant's claim 8.

Souissi, at col. 19, lines 35-40, does not make up for the aforementioned deficiencies of Souissi. Souissi, at col. 19, lines 35-40, simply states:

> "Accordingly, **it is an aspect of the invention that information is provided on the network as needed to determine when collisions occur, and information is provided to access priority needs**. Any or all of the devices can predict collisions. The devices can be programmed to automatically determine the priorities of the devices on the network and to act accordingly.

> **Alternatively, one device determines the priorities** and broadcasts priority tables or information to derive such tables, to all devices that participate in the network or ad-hoc network. Collision slot tables as well as priority tables can be exchanged among all entities participating in the network, **so as to effect distributed or central control that reduces or eliminates message collision effects** [emphasis added]."

Clearly, Souissi doesn't consider priority based on who a user of the radio device is or what the user of the radio device is doing, such as operating a vehicle. Souissi is only concerned with *priority of access to the channel to reduce or eliminate message collision effects*. In contrast, as recited in Applicant's claim 8, one or more wireless phones **are registered to operators of the vehicle**, and **access** to hands-free functionality is **prioritized based on whether the operator's wireless phone is registered during operation of the vehicle**. Souissi does not identify or discuss the problem that a person in the act of operating a car should have prioritized access to the hands-free functionality for safety reasons, as discussed in Applicant's specification.

In paragraph 7, the Examiner rejected claims 11 and 16 under 35 U.S.C. 103(a) as being unpatentable over Rosener in view of Souissi and further in view of Kinnunen (U.S. Pat. No. 6,687,517, hereinafter "Kinnunen") and in paragraph 8 the Examiner rejected claims 12 and 17 under 35 U.S.C. 103(a) as being unpatentable over Rosener in view of Souissi and further in view of Kuenzel (U.S. Pat. No. 4,399,330, hereinafter "Kuenzel"). For the following reasons, the Applicant submits that claims 8-17 are allowable over Rosener in view of Souissi, Kinnunen and/or Kuenzel, either when taken alone or when taken in combination.

Kinnunen describes a hands-free piconet network established in a vehicle in which several classes of users are identified with respective priorities. See Kinnunen, col. 5, line 34, to col. 6, line 45. A first class of user is defined as a default user (the "father"), who initially sets up the network in the car and by default has a higher priority. Kinnunen then goes on to describe that the next programmed user (the "mother") is initialized. Other classes (the "daughter") are then programmed in. In each of these cases, the mobile phone communicates with the user to set up the connection. However, the system of Kinnunen doesn't actually identify that a highest priority is given to the person operating the vehicle. Kinnunen does not describe or suggest actually registering a wireless phone so that it is identified with an owner operating the vehicle, and so prioritizing the operator's access to the hands-free functionality. Kinnunen does not identify or discuss the problem that a person in the act of operating a car should have prioritized access to the hands-free functionality for safety reasons, as discussed in Applicant's specification.

Kuenzel describes a radio system for coupling mobile subscriber devices in a mass transit vehicle to allow for non-cash charges and in which the mobile users have stored location information. See Kuenzel, Summary of the invention. While Kuenzel does describe that the operator of the vehicle has a higher priority of access at Kuenzel, col. 5, lines 32-36, Kuenzel doesn't actually identify that a highest priority for hands-free operation is given to the operator, and does not, in fact, describe any reason for such priority. In addition, Kuenzel is describing access through codes on the user's identification card, and not through registration with the radio

system. Kuenzel does not describe or suggest actually registering a wireless phone so that it is identified while operating the vehicle, and so prioritizing the operator's access to the hands-free functionality. Kuenzel does not identify or discuss the problem that a person in the act of operating a car should have prioritized access to the hands-free functionality for safety reasons, as discussed in Applicant's specification.

The recognition by the Applicant of a problem in the prior art cannot be used against the Applicant to support a conclusion of obviousness. See, e.g., In re Dow Chemical Co., 837 F.2d 469, 472, 5 USPQ2d 1529, 1531 (Fed. Cir. 1988) ("[A] patent applicant's statement of the purpose of the work [in the specification] is not prior art."); In re Fout, 675 F.2d 297, 300 n.2, 213 USPQ 532, 535 n.2 (CCPA 1982) ("Absent a statutory bar under 35 U.S.C. 102(b), (c) or (d), an applicant's own invention cannot be 'prior art' to him.").

In addition, without a suggestion in the prior art for a necessary modification and/or combination, a rejection on the grounds of obviousness is an improper use of hindsight. If the prior art does not contain even a suggestion of the specific modifications that are needed to be made to the teachings of the prior art to yield the claimed invention, then a rejection on the grounds of obviousness based solely on the advantages provided by that claimed invention is an improper use of hindsight. See, e.g., In re Fritch, 972, F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992) ("[I]t is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious . . . This court has previously stated that '[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.'").

The Examiner uses Applicant's recognition of actually registering a wireless phone so that it is identified with a person operating the vehicle, and so prioritizing the operator's access to the hands-free functionality, to support a conclusion of obviousness. For example, in the Office Action at page 5, the examiner states "The *motivation for the modification* [of the reference] is to do so in order to provide priority for a particular person for using the hands-free functions." Such use of Applicant's recognition of the problem that a person in the act of operating a car should have prioritized access to the hands-free functionality for safety reasons, as discussed in Applicant's specification, is improper, and is also improper use of hindsight.

Therefore, Applicant submits that neither Rosener, Souissi, Kinnunen, nor Kuenzel, when taken alone or in combination, describes or suggests that one of one or more wireless phones is registered to an operator of the vehicle, and access to hands-free functionality is prioritized during operation of the vehicle based on whether the operator's wireless phone is registered, as recited in Applicant's amended claims 8 and 13. For similar reasons, Applicant submits that claims 9-12 that depend from claim 8 and claims14-17 that depend from claim 13 are allowable over the cited references. The Applicant respectfully submits that the rejections of claims 8-17 under 35 U.S.C. 103(a) have been overcome.

In view of the above amendments and remarks, the Applicant believes that the now-pending claims are in condition for allowance. Therefore, the Applicant believes that the entire application is now in condition for allowance, and early and favorable action is respectfully solicited.

Respectfully submitted,

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Customer No. 74402
IP Legal Services LLC
1500 East Lancaster Ave., Suite 200
P.O. Box 1027
Paoli, Pennsylvania 19301

Ian M. Hughes
Registration No. 41,083
Attorney for Applicant
(610) 933-8809 (phone)
(610) 933-8811 (fax)